

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201602595	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 03/28/2016 9:23 PM	Location of Incident: 1st Avenue between East 50 and East 51 Street.	Precinct: 17	18 Mo. SOL 9/28/2017	EO SOL 9/28/2017	
Date/Time CV Reported Mon, 03/28/2016 11:07 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/28/2016 11:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kevon Sample	02609	935679	040 PCT
2. POM Christophe Kingsley	12039	945222	HWY 02

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Calvin Mason	03282	950843	HWY 02

Officer(s)	Allegation	Investigator Recommendation
A.SGT Kevon Sample	Abuse: Sgt. Kevon Sample stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Kevon Sample	Discourtesy: Sgt. Kevon Sample acted discourteously toward § 87(2)(b)	
C.SGT Kevon Sample	Force: Sgt. Kevon Sample used physical force against § 87(2)(b)	
D.POM Christophe Kingsley	Force: PO Christopher Kingsley used physical force against § 87(2)(b)	
E.POM Christophe Kingsley	Force: PO Christopher Kingsley tightly handcuffed § 87(2)(b)	
F.POM Christophe Kingsley	Abuse: PO Christopher Kingsley searched § 87(2)(b)	
G.SGT Kevon Sample	Abuse: Sgt. Kevon Sample threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via email on March 29, 2016 (**15 Board Review**). § 87(2)(b) also filed a complaint in regards to this incident with IAB (Log No. 2016-11361) on March 31, 2016 (**01 Board Review**).

On March 28, 2016, Sgt. Kevon Sample pursued § 87(2)(b)'s vehicle on the southbound FDR for approximately four miles from the area surrounding the Triborough Bridge to East 50th Street and 1st Avenue in Manhattan (**Allegation A**). Sgt. Sample was off-duty and driving his personal vehicle. Sgt. Sample allegedly threw plastic and glass water bottles at § 87(2)(b)'s vehicle (**Allegation B**). § 87(2)(b) exited the FDR and drove down 1st Avenue, where he observed PO Christopher Kingsley and PO Calvin Mason parked in a marked patrol car at the corner of East 50th Street and 1st Avenue. § 87(2)(b) stopped his vehicle in front of the marked patrol car. Sgt. Sample stopped behind § 87(2)(b) and exited his vehicle. Sgt. Sample identified himself as a police officer and told § 87(2)(b) he was under arrest. Sgt. Sample and PO Kingsley pushed § 87(2)(b) against his vehicle and punched him twice on the right side of his face and eye (**Allegation C** and **Allegation D**). PO Kingsley handcuffed § 87(2)(b). § 87(2)(b) told PO Kingsley that the handcuffs were too tight and PO Kingsley allegedly tightened the handcuffs (**Allegation D**). PO Kingsley searched § 87(2)(b) and retrieved § 87(2)(b)'s identification (**Allegation E**). Sgt. Sample allegedly told § 87(2)(b) that he was going to “get him,” and that § 87(2)(b) was going to “get it” (**Allegation F**).

§ 87(2)(b) was issued a summons for § 87(2)(b) as a result of this incident (**05 Board Review**).

There is no video footage regarding this incident.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint § 87(2)(b) has been party to (**14 Board Review**).
- Sgt. Sample has been a member of service for eleven years and has seventeen previous allegations, including two allegations of physical force with no substantiations. PO Kingsley has been a member of service for eight years and has one previous allegation with no substantiations.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) was unable to say which officer allegedly pushed and punched him because he was fearful for his life and the events unfolded quickly. Sgt. Sample stated that only one officer, identified by the investigation as PO Kingsley, was in the police vehicle which initially assisted him. Sgt. Sample did not report seeing PO Mason (**06 Board Review**). PO Kingsley stated that PO Mason did not physically assist him in handcuffing § 87(2)(b) and did not have any physical contact with § 87(2)(b) (**07 Board Review**). PO Mason stated that he did not punch § 87(2)(b) and did not have any physical contact with § 87(2)(b) (**08 Board Review**). § 87(2)(g)
- § 87(2)(b)
- § 87(2)(b)

Allegation A –Abuse of Authority: Sgt. Kevon Sample stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Sgt. Sample stopped § 87(2)(b)'s vehicle after chasing him on the FDR from the area surrounding the Triborough Bridge, to East 50th Street and 1st Avenue.

During the incident, § 87(2)(b) called 911 and reported that he was on FDR driving southbound, approaching 71st Street, and was being followed by an aggressive driver, identified by the investigation as Sgt. Sample. Sgt. Sample was driving a dark colored Jeep Cherokee. Sgt. Sample was flashing his high beams at § 87(2)(b) throwing bottles at his car, and tailgating § 87(2)(b)'s vehicle. § 87(2)(b) tried to slow down and allow Sgt. Sample to pass him several times, but Sgt. Sample remained behind him and continued pursuing him and did not pass him (**18 Board Review**).

During his CCRB statement, § 87(2)(b) stated that, unprovoked, Sgt. Sample began driving behind him and began flashing his high beams and honking his horn at § 87(2)(b) and eventually threw several bottles at § 87(2)(b)'s vehicle. § 87(2)(b) did not know that Sgt. Sample was a police officer, because Sgt. Sample was off duty and driving his personal vehicle. § 87(2)(b) exited the FDR and stopped at a red light as he approached First Avenue. Sgt. Sample exited his vehicle, and charged at § 87(2)(b)'s vehicle. § 87(2)(b) ran the red light, and drove down First Avenue until he saw PO Kingsley and PO Mason in a marked RMP and exited his vehicle to ask them for help (**02 Board Review**).

Sgt. Sample called 911 and reported § 87(2)(b) was driving “recklessly” on the Southbound FDR. Sgt. Sample was at 106th Street, in between Exit 15 and Exit 16, at the time he placed his call to 911. Sgt. Sample said that he was “chasing” and “following” § 87(2)(b). The 911 operator asked Sgt. Sample if this was a hit and run, and Sgt. Sample responded that it was, and § 87(2)(b) was “trying to get away.” Sgt. Sample stated that his son’s car seat had dislodged and fallen over, and Sgt. Sample did not know if his son was injured or not. § 87(2)(b) exited at Exit 10 at East 49th Street, and began driving northbound on First Avenue. Sgt. Sample is heard identifying himself as a police officer at the 5:00 mark, and instructing § 87(2)(b) to put his arms behind his back at the 5:18 mark (**19 Board Review**).

During his CCRB statement, Sgt. Sample stated that he came to be aware of § 87(2)(b) because § 87(2)(b) was driving erratically and swerved in front of him, causing Sgt. Sample to have to brake suddenly, to avoid hitting § 87(2)(b)'s vehicle. Sgt. Sample drove up on the

embankment to avoid hitting § 87(2)(b) Sgt. Sample struck a lamp post, causing the lamp post to fall and damage to Sgt. Sample's vehicle. § 87(2)(b) then crossed in to the lane next to Sgt. Sample. Sgt. Sample signaled in to the lane that § 87(2)(b) was driving in, to get § 87(2)(b)'s license plate number. Sgt. Sample provided § 87(2)(b)'s license plate number to the dispatcher. Sgt. Sample continued to follow after § 87(2)(b) Sgt. Sample honked at § 87(2)(b) to signal to him to stop, but § 87(2)(b) continued driving. Sgt. Sample reported to the 911 operator that he had his small child in the car, and thought that the child may have been injured. § 87(2)(b) exited the highway, and Sgt. Sample pulled up alongside him and showed him his badge. § 87(2)(b) ran the red light, and Sgt. Sample ran the red light in order to keep following § 87(2)(b) § 87(2)(b) drove down First Avenue, and stopped at a parked RMP approximately two blocks later. Sgt. Sample and § 87(2)(b) both exited their vehicles. Sgt. Sample told § 87(2)(b) that he was a police officer, and that he was under arrest **(06 Board Review)**.

During the incident, § 87(2)(b) an independent witness, called 911 to report that he thought Sgt. Sample may have been driving drunk. § 87(2)(b) stated that Sgt. Sample was "doing some crazy stuff," swerving side to side, nearly ran a car off the road, and almost caused several other drivers to crash **(20 Board Review)**.

§ 87(2)(b) provided a telephone statement to the CCRB. He observed Sgt. Sample's vehicle attempt to run a vehicle off of the road. Sgt. Sample's vehicle nearly struck several vehicles and the edge of an overpass. § 87(2)(b) believed that Sgt. Sample was drunk because he was driving dangerously and because he swerved from side to side.

Patrol Guide Procedure 212-39 states that officers should "determine the necessity for commencing and continuing a vehicle pursuit by considering... the nature of offense... location and population density... Department policy requires that a vehicle pursuit be terminated whenever the risks to... the public outweigh the danger to the community if suspect is not immediately apprehended." **(10 Board Review)**

§ 87(2)(g)
[REDACTED]

Allegation B- Discourtesy: Sgt. Kevon Sample acted discourteously toward § 87(2)(b)

[REDACTED]

§ 87(2)(b) stated that while Sgt. Sample was chasing him, Sgt. Sample threw multiple plastic and glass water bottles at his car (**02 Board Review**).

Sgt. Sample stated that he did not throw water bottles, or any other objects, at § 87(2)(b)'s car at any point during the incident (**06 Board Review**).

§ 87(2)(b) did not see Sgt. Sample throw any objects out of his car (**16 Board Review**).

§ 87(2)(g)

Allegation C- Force: Sgt. Kevon Sample used physical force against § 87(2)(b)

Allegation D- Force: PO Christopher Kingsley used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was pushed against his car and punched by Sgt. Sample and PO Kingsley (**02 Board Review**).

Sgt. Sample (**06 Board Review**) and PO Kingsley (**07 Board Review**) stated that they did not punch § 87(2)(b) in his head, and did not make any physical contact with § 87(2)(b) besides placing him against his car and getting his arms behind his back, and neither Sgt. Sample nor PO Kingsley saw any other officer punch § 87(2)(b).

PO Mason (**08 Board Review**) did not see Sgt. Sample or PO Kingsley punch § 87(2)(b) nor did he see any other officer do so.

§ 87(2)(g)

Allegation E- Force: PO Christopher Kingsley tightly handcuffed § 87(2)(b)

§ 87(2)(b) stated that after he was handcuffed, he told PO Kingsley that he had just had wrist surgery and that the handcuffs were too tight and causing him pain. In response, PO Kingsley tightened the handcuffs (**02 Board Review**).

PO Kingsley stated that he did not tighten § 87(2)(b)'s handcuffs (**07 Board Review**).

Neither Sgt. Sample (**06 Board Review**) nor PO Mason (**08 Board Review**) saw PO Kingsley tighten § 87(2)(b)'s handcuffs.

§ 87(2)(g)

Allegation F: Abuse of Authority: PO Christopher Kingsley searched § 87(2)(b)
§ 87(2)(b) stated that after he was handcuffed, PO Kingsley reached in to his pocket, removed
....his wallet, and his identification (**02 Board Review**).

PO Kingsley stated that after § 87(2)(b) was handcuffed, he conducted a search of § 87(2)(b) for safety. Sgt. Sample instructed PO Mason to arrest § 87(2)(b) and as such, PO Kingsley believed that § 87(2)(b) was under arrest (**07 Board Review**).

United States V. Robinson 414.U.S. 218 (1973) states that “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment, and a search incident to the arrest requires no additional justification.” (**09 Board Review**)

§ 87(2)(g)
Allegation G: Abuse of Authority: Sgt. Kevon Sample threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that Sgt. Sample told him he was going to “get him,” and that § 87(2)(b) was going to “get it.” (**02 Board Review**)

Sgt. Sample stated that he did not tell § 87(2)(b) that he was going to “get him,” or that § 87(2)(b) was going to “get it,” and did not otherwise threaten § 87(2)(b) with the use of force (**06 Board Review**).

Neither PO Mason (**08 Board Review**) nor PO Kingsley (**07 Board Review**) heard Sgt. Sample tell § 87(2)(b) that he was going to “get him,” or that § 87(2)(b) was going to “get it,” and did not otherwise hear Sgt. Sample threaten § 87(2)(b) with the use of force.

§ 87(2)(g)

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Squad: 12

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date